

**Supplemental Letter of Findings: 01-20150067
Individual Indiana Income Tax
For the Years 2008 through 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Business Owner was responsible for paying additional individual income tax on money misappropriated from his trust company's escrow accounts; the assessments were not barred by the three-year statute of limitations because Business Owner failed to establish that the diverted funds were properly accounted for on his original income tax returns.

ISSUES

I. Indiana Individual Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1(a); IC § 6-8.1-5-1(b); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department failed to establish he owes additional Indiana income tax.

II. Indiana Individual Income Tax - Statute of Limitations.

Authority: IC § 6-8.1-5-2(a); IC § 6-8.1-5-2(f).

Taxpayer maintains that the assessment of additional income tax is barred by the three-year statute of limitations.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who previously filed 2008, 2009, 2010, 2011, and 2012 Indiana income tax returns. The Indiana Department of Revenue ("Department") issued proposed assessments of additional income tax for those same years. The Department's records indicate that the additional assessments "reflect[] the tax due from a criminal investigation," "[are] the result of a desk examination," and are "based on the best information available to the Department."

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. A Letter of Findings was issued October 2015 denying Taxpayer's protest. (20151230 Ind. Reg. 045150433 NRA). Taxpayer continued to disagree with both the assessments and the conclusions contained in the Letter of Findings. Taxpayer requested and was granted a rehearing. This Supplemental Letter of Findings results.

I. Indiana Individual Income Tax - Best Information Available Assessment.

DISCUSSION

Taxpayer argues that the assessments are "not reasonable," and are "unsupported and factually inaccurate"

The initial assessments were based upon information obtained from the "Office of the U.S. Attorney for [the] Southern District of Indiana." That information alleged that Taxpayer had embezzled approximately \$650,000 from funds held in escrow by a title company of which Taxpayer was part owner.

As a direct result of those allegations, Taxpayer submitted a "Petition to Enter Plea of Guilty and Plea Agreement" to the United States District Court. That plea agreement - signed by both Taxpayer and his attorney - set out details of the initial investigation.

As explained in the plea agreement, a routine audit of the title company's business accounts was initiated by the Indiana Department of Insurance. That audit indicated that Taxpayer - through his counsel - revealed the title company was preparing to cease business and "there would be a shortage in its escrow account of \$100,000 to \$200,000." It was at that point the state police and Secret Service joined the investigation. As detailed in the plea agreement:

Law enforcement discovered that for 35 withdrawals from the escrow account, there was no corresponding [documentation]. In many of these transactions, there were false entries created in the accounting software which listed a file number. When these file numbers were researched, it was discovered that no such client file actually existed. These false entries were created by the user name of an employee at [title company]. That employee was interviewed and denied making the entries, and further stated that [Taxpayer] knew that employee's user name and password.

It appeared that [Taxpayer] was improperly using funds from the escrow account for purposes other than those permitted by law. Current closings were being funded by deposits from future closings with the misappropriated funds being used by [Taxpayer] primarily to pay [title company's] payroll and business expenses.

In that proposed plea agreement, in exchange for the government's promise "not to bring other federal charges against the [Taxpayer]," Taxpayer agreed to pay a "special fee" and to pay \$236,419 in restitution. In addition, Taxpayer agreed to plead guilty to the criminal offense of wire fraud and agreed that the government was able to establish "beyond a reasonable doubt" that Taxpayer had misappropriated funds belonging to his title company's escrow account.

The proposed assessment constitutes evidence that the Department's claim for the unpaid *[sic]* tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(b).

The Department issued the proposed assessments of additional tax under the authority of IC § 6-8.1-5-1(a).

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (Emphasis added).

Taxpayer asserts that the Department failed to establish that the assessments were valid, that the Department lacked a "reasonable belief" that Taxpayer did not report his Indiana income correctly on the originally filed returns, that the assessments were based on hearsay "and mere references to unrelated and undisclosed audits," and that the assessments violated Taxpayer's protection against self incrimination.

Taxpayer's arguments turn the burden of proof standard on its head. Taxpayer has provided nothing which would establish that he reported his Indiana source income correctly on his original returns and that the funds misappropriated from the escrow account were accounted for on those original returns. The evidence relied upon by the Department was not based on second-hand gossip or unsubstantiated newspaper clippings. The Department relied upon information communicated to it by the U.S. District Attorney and confirmed by information contained in Taxpayer's own plea agreement. Taxpayer has failed to meet his burden under IC § 6-8.1-5-1(c) of

establishing that the proposed assessments were incorrect.

FINDING

Taxpayer's protest is denied.

II. Indiana Individual Income Tax - Statute of Limitations.

FINDING

Taxpayer argues that the assessments of additional tax for 2008 through 2010 are barred by the three-year statute of limitations.

IC § 6-8.1-5-2(a) limits the time during which the Department may issue an assessment. The statute provides in relevant part:

Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or either of the following:

(1) The due date of the return

However, "If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment." IC § 6-8.1-5-2(f).

Taxpayer maintains that he filed his 2008 through 2010 income tax returns in a timely fashion and that the Department is now barred from issuing additional assessments for those years.

Taxpayer's argument is counter-intuitive. If Taxpayer filed those returns reporting additional income attributable to the misappropriation of funds from his company's escrow accounts, the Department would be barred because Taxpayer submitted returns which were correct and because the requisite three-year limitation had passed. However, Taxpayer has provided no such evidence. If Taxpayer submitted returns which did not account for the diverted funds, then Taxpayer filed a "fraudulent" return and the Department is not bound by the three-year limitation.

With the best information available to the Department, it issued proposed assessments for additional tax not accounted for in Taxpayer's individual 2008 through 2010 returns. Those proposed assessments were not barred by the three-year statute of limitations.

FINDING

Taxpayer's protest is denied.

SUMMARY

Taxpayer's protest of the issues set out in Part I and II is denied.

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